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09/785,572	02/16/2001	Clifford A. Pickover	I01.008	4256

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BUCKLEY, MASCHOFF, TALWALKAR LLC  
5 ELM STREET  
NEW CANAAN, CT 06840

EXAMINER
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PUENTE, EMERSON C

ART UNIT	PAPER NUMBER
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2113

DATE MAILED: 02/26/2004

6

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/785,572

Applicant(s)

PICKOVER ET AL.

Examiner

Emerson C Puente

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 9, 10, and 14-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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### DETAILED ACTION

This action is made **FINAL**. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action.

Claims 1-6, 9-10, and 14-26 have been examined.

#### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 9, 10, 20-23, and 25-26 are rejected under 35 U.S.C. **103(a)** as being unpatentable over by US Patent No. 6,553,507 of Cohen in view of US Patent No. 6,167,358 of Othmer et al. referred hereinafter "Othmer".

In regards to claim 1, Cohen discloses a method of supporting a software program, comprising:

receiving error data for at least a first error (see column 2 lines 56-64);  
identifying a patch for said at least first error (see column 2 lines 56-64); and  
forwarding said patch to update said software program (see column 2 lines 65-67);

However, Cohen has failed to explicitly disclose said at least first error including a user error performed by a user in operating the software program.

Othmer discloses receiving error data for at least a first error, said at least first error including a user error performed by a user in operating the software program. Othmer states when a user of a particular client computer has a software crash, the manager may use the information from the black boxes for that particular client computer to help determine the cause of the crash (see column 7 lines 42-45).

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Cohen and Othmer such that said at least first error including a user error performed by a user in operating the software program. A person of ordinary skill in the art would have been motivated because Cohen discloses detecting faults during the execution of a software program (see column 2 lines 5-9) and a user error performed by a user in operating the software program, constitutes as a type of fault during the execution of a software program.

In regards to claim 2, Cohen discloses wherein first data comprises first data identifying said at least first error (see column 2 lines 20-25 and 50-64).

In regards to claim 3 and 4, Cohen discloses wherein said first data includes an error code and an application identifier (see column 2 lines 20-25 and 50-55).

In regards to claim 5, Cohen discloses monitoring said software program for the generation of errors, and identifying said at least first error (see column 2 lines 1-15 and 40-55).

In regards to claim 9, Othmer discloses wherein said user error is a failure to properly operate said software program (see column 7 lines 42-45).

In regards to claim 10, Othmer discloses wherein the user error is a failure to efficiently operate said software program (see column 7 lines 42-45).

In regards to claim 20, Cohen disclose wherein error data further comprises:

second data identifying at least a first condition under which said at least first error occurred (see column 2 lines 50-64).

In regards to claim 21, Cohen discloses a device for supporting software on at least a first user device, comprising:

a processor (see figure 1 item 106);

a communication device, coupled to said processor, receiving error information for at least a first error from said at least first user device (see figure 1 and column 2 lines 11-15); and

a storage device in communication with said processor and storing instructions adapted to be executed by a processor (see figure 1 and column 2 lines 11-15);

identifying a patch for said at least first error (see column 2 lines 56-64); and

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forwarding said patch to update said software on said at least first user device (see column 2 lines 65-67);

However, Cohen has failed to explicitly disclose said at least first error including a user error performed by a user in operating the software program.

Othmer discloses receiving error data for at least a first error, said at least first error including a user error performed by a user in operating the software program. Othmer states when a user of a particular client computer has a software crash, the manager may use the information from the black boxes for that particular client computer to help determine the cause of the crash (see column 7 lines 42-45).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Cohen and Othmer such that said at least first error including a user error performed by a user in operating the software program. A person of ordinary skill in the art would have been motivated because Cohen discloses detecting faults during the execution of a software program (see column 2 lines 5-9) and a user error performed by a user in operating the software program, constitutes as a type of fault during the execution of a software program.

In regards to claim 22, Cohen discloses wherein said error information comprises:  
first information identifying said at least first error (see column 2 lines 20-25); and  
second information identifying at least a first condition under which said at least first error occurred (see column 2 lines 50-64).

In regards to claim 23, Cohen discloses said first information includes at least an error code and an application identifier (see column 2 lines 20-25 and 50-55).

In regards to claim 25, Cohen disclose a system for supporting software comprising:  
at least a first user device having a processor(see figure 1 item 106 and column 2 line 9);  
a communication device, coupled to said processor, configured to send and receive data over a network (see figure 1 and column 2 lines 11-15); and

a storage device in communication with said processor and storing instructions adapted to be executable by said processor to execute at least a first software program, monitor said at least

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first software program for errors, and forward error information about an at least first error to a controller(see figure 1 and column 2 lines 1-15 and 40-55) and ,

said controller having a controller processor, a controller communication device, coupled to said controller processor, configured to send and receive data over said network, and a storage device in communication with said controller processor to receive said error information about said at least first error, identify a patch for said at least first error; and forward said patch to update said at least first software program on said at least first user device (see column 2 lines 56-67).

However, Cohen has failed to explicitly disclose said at least first error including a user error performed by a user in operating the software program.

Othmer discloses receiving error data for at least a first error, said at least first error including a user error performed by a user in operating the software program. Othmer states when a user of a particular client computer has a software crash, the manager may use the information from the black boxes for that particular client computer to help determine the cause of the crash (see column 7 lines 42-45).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Cohen and Othmer such that said at least first error including a user error performed by a user in operating the software program. A person of ordinary skill in the art would have been motivated because Cohen discloses detecting faults during the execution of a software program (see column 2 lines 5-9) and a user error performed by a user in operating the software program, constitutes as a type of fault during the execution of a software program.

In regards to claim 26, see basis for rejection for claim 1. Claim 26 is simply a computer readable storage medium which stores a program for implementing the method set forth in claim 1, and therefore is necessarily included in the teachings of Cohen.

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Claims 6, 14-19, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen in view of Othmer and in further view of US Patent No. 6,151,643 of Cheng et al. referred hereinafter "Cheng".

In regards to claim 14-16, Cohen in view of Othmer discloses all the claimed subject matter, except wherein said forwarding said patch further comprises forwarding support information to said user device, wherein support information includes an advertisement and set of instructions for operating said software program.

Cheng disclose forwarding support information to the user device, wherein support information includes an advertisement and set of instructions for operating said software program. Cheng states each software update is associated with information that describes the particulars for the installation, such as configuration, decompression, or other information (see column 8 lines 55-62). Furthermore, Cheng discloses sending information, advertisements and other promotional material to each specific user, indicating support information including an advertisement (see column 22 lines 29-34), and downloading a software update, along with installation program, files, or the like (see column 8 lines 36-40), indicating instructions for operating said software program .

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include support information, wherein support information includes an advertisement. A person of ordinary skill in the art would have been motivated to make the modification to Cohen in view of Othmer because advertisement, as per teaching of Cheng, would make the user aware of information associated or derived from the software program, which mostly likely be of interest to the user, as per teaching Cheng (see column 22 lines 63-66). Furthermore, It would have been obvious to one of ordinary skill in the art at the time the invention was made to include support information , wherein the support information includes a set of instructions for operating said software program. A person of ordinary skill in the art would have been motivated to make the modification because installation programs, files or the like, indicating instructions for operating said software program, is known and commonly used to provide a means for the installation of the update or patch, as per teaching of Cheng (see column 8 lines 55-62).

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In regards to claim 17, Cohen discloses all the claimed subject matter, except receiving payment for said patch.

However, Cheng discloses receiving payment for patch (see column 9 lines 17-27).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to receive payment for the patch. A person of ordinary skill in the art would have been motivated to receive payment for the patch because Cohen in view of Othmer discloses forwarding a patch for updating software, thus providing service, and Cheng discloses receiving payment for a software update, thus providing reimbursement for the service.

In regards to claim 18, Cheng discloses wherein said payment is received from a user of said user device (see column 9 lines 17-21).

In regards to claim 19, Cheng discloses wherein said payment is received from a provider of said software program (see column 9 lines 22-27).

In regards to claim 6 and 24 Cohen fails to disclose notifying a third party of said at least first error. However, Cheng discloses receiving payment for patch, wherein said payment is received from a provider of said software program, indicating notifying a third party of at least first error.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to receive payment for the patch, wherein said payment is received from a provider of said software program, indicating notifying a third party of at least first error. A person of ordinary skill in the art would have been motivated to receive payment for the patch for the reason cited under claim 17.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after



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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Emerson C Puente whose telephone number is (703) 305-8012. The examiner can normally be reached on 8-5 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert W Beausoliel can be reached on (703) 305-9713. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-5631.

*Emerson Puente*

2/22/04

  
ROBERT BEAUSOLIEL  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100